IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12730 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ABHESING VAJESING THAKOR THRO' BROTHER BABUSING VAJESIN
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 12730 of 2000
MS SUBHADRA G PATEL for Petitioner No. 1
MR HL JANI ASSTT GOVERNMENT PLEADER for Respondent No. 1-3
NOTICE SERVED BY DS for Respondent No. 1-2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 03/07/2001

ORAL JUDGEMENT

#. Heard Ms.Subhadra G. Patel, learned advocate appearing on behalf of the petitioner and Mr.H.L.Jani, learned AGP on behalf of the respondents.

#. In the present petition, the petitioner has challenged the order of detention dated 29th November, 2000 under Article 226 of the Constitution of India. The order of detention challenged before this Court has been passed by the District Magistrate, Banaskantha at Palanpur under Section 3[1] of the PASA Act. The present petitioner has been detained initially in District Jail Bharuch and thereafter at Bhuj an now at present he has been detained in Sabarmati Jail as Class - II detenu. The grounds of detention are communicated and supplied to the petitioner detenu by the detaining authority under Section 9[1] of the PASA Act. According the grounds of detention, in all seven offence under the provisions of Bombay Prohibition Act have been registered against the present petitioner. The last offence has been registered against the present petitioner on date 27th September, 2000. The statement of the secret witnesses have been recorded on 9th November, 2000 and the same has been verified by the Dy.S.P. on 13th November, 2000. The said statements of the secret witnesses are not verified by the detaining authority. However, the State Government - respondent as well as the detaining authority has not filed any reply.

#. Learned advocate Ms.S.G.Patel has submitted that though various grounds are raised challenging the detention order but one or two grounds are enough to vitiate the order of detention. She submitted that looking to page-121, statements of secret witnesses recorded on 9th November, 2000 by the Police Inspector, LCB, Palanpur and the said statement is verified by the Dy.S.P. Shri M. A. Malek on 13th November, 2000. Similarly, other two statements have recorded by the police inspector and verified by the Dy.S.P. on 13th November, 2000 but looking to the record, said statements of secret witnesses not verified by the detaining authority. Therefore, she submitted that genuineness of the statements which has been made by the secret witnesses has not been verified by the detaining authority and this fact reveals, total non application of mind on the part of the detaining authority. It also does not establish privilege claimed by the detaining authority under Section 9[2] of the PASA Act and also not establishes subjective satisfaction on the part of the detaining authority while passing the detention order. Therefore, the first contention is enough and sufficient to vitiate the order of detention.

#. Learned AGP Mr.H.L.Jani, appearing on behalf of the respondents has fairly submitted that no doubt three statements recorded by the police inspector, LCB,

Palanpur and the same have been verified by the Dy.S.P. on 13th November, 2000 but the said statements have not been verified by the detaining authority. In view of this contention, when the detaining authority has not verified the statements of the secret witnesses, in such situation, obviously subjective satisfaction which requires to be established from the record, is not justified. It is the duty of the detaining authority to verify the statements of the secret witnesses and to examine the genuineness of the statements made by the secret witnesses and accordingly from the materials and details submitted by the secret witnesses, subjective satisfaction requires to be established on the part of the detaining authority but looking to the original record, subjective satisfaction of the detaining authority is not established as statements of secret witnesses are not verified by the detaining authority himself and therefore, according to my opinion, the order of detention is required to be set aside.

#. In the result, present petition is allowed. The order of detention dated 29th November, 2000 passed by the District Magistrate, Banaskantha at Palanpur is hereby quashed and set aside. The present petitioner detenu - ABHESING VAJESING THAKOR is ordered to be set at liberty forthwith if he is not required in any other case. Rule is made absolute with no order as to costs.

Date : 3-7-2001 [H.K.Rathod, J.]

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